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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,831	01/21/2004	Victor Guerrero	034035-003	6121
21839	7590	02/07/2006	EXAMINER	
BUCHANAN INGERSOLL PC (INCLUDING BURNS, DOANE, SWECKER & MATHIS) POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			ALEXANDER, REGINALD	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,831

Applicant(s)

GUERRERO, VICTOR

Examiner

Reginald L. Alexander

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 21 and 23-26 is/are rejected.
- 7) ☒ Claim(s) 17-20 and 22 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-26, drawn to filter assembly, classified in class 99, subclass 306.
- II. Claims 27 and 28, drawn to a drinking straw and beverage lid, classified in class 99, subclass 323.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with David Heckadon on January 30, 2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-26. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27 and 28 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-8, 13 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justus in view of Ziemek.

There is disclosed in Justus a beverage filter assembly, comprising: a frame 2 having a plurality of openings; a mesh cloth filter 3 disposed within the frame; a lid 6; and a support flange 4 which could be used as a handle.

Ziemek discloses that it is known in the art to construct a filter of a wire mesh and to coat the wire mesh with a gold plating.

It would have been obvious to one skilled in the art to modify the filter of Justus with that taught by Ziemek and construct it of a wire mesh having a gold plating, in order to increase the life of the filter.

In regards to the claimed density of the filter, it would have been obvious to one skilled in the art to construct the prior art filter within the recited strands per inch range, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Claims 2, 3 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justus in view of Ziemek as applied to claim 1 above, and further in view of Hunnicutt, Jr.

Hunnicutt discloses the use of a conical diffuser 37, 39 having a rounded top surface, mounted within a filter element of a brewing device.

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It would have been obvious to one skilled in the art to provide the filter assembly of Justus, as modified by Ziemek, with the diffuser disclosed in Hunnicutt, in order to direct a brewing fluid towards more surfaces of a beverage ingredient.

In regards to claim 4, it would have been obvious to one skilled in the art to make the diffuser integral, since it has been held that forming in one piece an article from two pieces involves only routine skill in the art.

In regards to claim 11, it is an obvious matter of design choice to have a spherical diffuser, since applicant has not disclosed that a varied shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the shapes provided in the prior art.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justus in view of Ziemek as applied to claim 1 above, and further in view of Pytlik et al.

Pytlik discloses a flow regulator for adjusting the size of openings in the bottom of a filter assembly.

It would have been obvious to one skilled in the art to provide the device of Justus, as modified by Ziemek, with the flow regulator taught by Pytlik, order to regulate the brewing time and coffee strength.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Justus in view of Ziemek as applied to claim 1 above, and further in view of Sandvig.

Sandvig discloses the use of an inner frame within a filter assembly.

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It would have been obvious to one skilled in the art to provide the device of Justus, as modified by Ziemek, with the inner frame taught by Sandvig, in order to lend support to the filter cloth.

The recited shape of the filter assembly and its elements is an obvious matter of design choice to one skilled in the art, since applicant has not disclosed that the recited shapes solves any stated problems or is for any particular purpose.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Justus in view of Ziemek as applied to claim 1 above, and further in view of Illk.

Illk discloses that it is known in the art to provide a retrieving cord with a filter assembly.

It would have been obvious to one skilled in the art to provide the device of Justus, as modified by Ziemek, with the retrieving cord taught in Illk, in order to pull the filter in and out of the brewing device.

Claims 1, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Renner in view of Fritsche.

There is disclosed in Renner a filter assembly, comprising: a frame (B, d') having a plurality of openings; a filter cloth (C'); and a floating member (A, A').

Fritsche discloses that it is known in the art to use a wire filter cloth.

It would have been obvious to one skilled in the art to modify the filter of Renner with that disclosed in Fritsche and construct it of a wire mesh, in order to increase the life of the filter.

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Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Renner in view of Fritsche as applied to claim 1 above, and further in view of Hunnicutt, Jr.

Hunnicutt discloses the use of a conical diffuser 37, 39 having a rounded top surface, mounted within a filter element of a brewing device.

It would have been obvious to one skilled in the art to provide the filter assembly of Renner, as modified by Fritsche, with the diffuser disclosed in Hunnicutt, in order to direct a brewing fluid towards more surfaces of a beverage ingredient.

Allowable Subject Matter

Claims 17-20 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

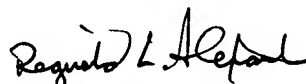
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla
February 6, 2006


Reginald L. Alexander
Primary Examiner
Art Unit 1761